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9 and Third-Party Plaintiffs KINGS EXPRESS LA,
10 INC., and JOHN VINCENT TARWATER

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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 PRO-COM PRODUCTS, INC. a
16 California Corporation,

17 Plaintiff,

18 vs.

19 KING'S EXPRESS LA, INC., a
20 California Corporation; KING'S
21 EXPRESS, INC., a California
22 Corporation; KING'S EXPRESS, INC.,
23 an Unknown Business Entity; DENNIS
24 MCCORMICK, an Individual; JOHN
25 VINCENT TARWATER, an Individual;
26 and DOES 1 through 25, inclusive,

27 Defendants.

28 KINGS EXPRESS LA, INC., a
California corporation; and JOHN
VINCENT TARWATER, an individual,

Crossclaim Plaintiffs and
Third-Party Plaintiffs,

vs.

DENNIS MCCORMICK, an individual,

Crossclaim Defendant, and

KINGS EXPRESS, INC., a Minnesota
corporation

Third-Party Defendant

Case No. 2:18-cv-06035 DMG (SKx)

District Judge Dolly M. Gee
Magistrate Judge Steve Kim

**AMENDED ANSWER,
CROSSCLAIM AND THIRD-PARTY
COMPLAINT**

[Demand for Jury Trial]

1 Defendants Kings Express LA, Inc., a California corporation (“Kings LA”),
2 and John Vincent Tarwater, an individual (“Tarwater”), for themselves alone,
3 submit the following (1) Amended Answer and (2) Crossclaim and Third-Party
4 Complaint in this action:

AMENDED ANSWER TO COMPLAINT

Answers To Allegations In Complaint

7 1. Answering paragraph 1, Kings LA and Tarwater lack information and
8 belief sufficient to answer or deny the allegations therein and, on that basis, deny
9 such allegations.

10 2. Answering paragraph 2, Kings LA and Tarwater admit the allegations
11 contained therein.

12 3. Answering paragraph 3, Kings LA and Tarwater deny the allegations
13 contained therein.

14 4. Answering paragraphs 4 and 5, Kings LA and Tarwater lack
15 information and belief sufficient to answer or deny the allegations therein and, on
16 that basis, deny such allegations.

17 5. Answering paragraph 6, Kings LA and Tarwater admit the allegations
18 contained therein

19 6. Answering paragraphs 7 and 8, Kings LA and Tarwater lack
20 information and belief sufficient to answer or deny the allegations therein and, on
21 that basis, deny such allegations

22 7. Answering paragraph 9, Kings LA and Tarwater deny the allegations
23 contained therein.

24 8. Answering paragraph 10. Kings LA and Tarwater:

25 a. Admit that Dennis McCormick (“McCormick”) was designated
26 as Kings LA’s chief executive officer but deny that he acted in that capacity –
27 whether in connection with any of the actions alleged in the Complaint or otherwise;

b. Admit that Tarwater was and is the president of Kings LA; and

1 c. Deny the remaining allegations contained therein.

2 9. Answering paragraph 11, Kings LA and Tarwater deny the allegations
3 contained therein.

4 10. Answering paragraph 12, Kings LA and Tarwater:

5 a. Admit that Tarwater represented to Plaintiff that Kings Express,
6 Inc. ("Kings") was a motor carrier in the business of providing motor vehicle
7 transportation for compensation; and

8 b. Deny the remaining allegations contained therein.

9 11. Answering paragraphs 13 through 15, Kings LA and Tarwater deny the
10 allegations contained therein.

11 12. Answering paragraph 16, Kings LA and Tarwater incorporate their
12 answers to paragraphs 1 through 15 of the Complaint.

13 13. Answering paragraphs 17 through 22, Kings LA and Tarwater deny the
14 allegations contained therein.

15 14. Answering paragraph 23, Kings LA and Tarwater incorporate their
16 answers to paragraphs 1 through 15 of the Complaint.

17 15. Answering paragraphs 24 through 28, Kings LA and Tarwater deny the
18 allegations contained therein.

19 16. Answering paragraph 29, Kings LA and Tarwater incorporate their
20 answers to paragraphs 1 through 15 of the Complaint.

21 17. Answering paragraphs 30 through 33, Kings LA and Tarwater lack
22 information and belief sufficient to answer or deny the allegations contained therein
23 and, on that basis, deny such allegations.

24 18. Answering paragraph 34, Kings LA and Tarwater incorporate their
25 answers to paragraphs 1 through 33 of the Complaint.

26 19. Answering paragraph 35, Kings LA and Tarwater lack information and
27 belief sufficient to answer or deny the allegations therein and, on that basis, deny
28 such allegations.

20. Answering paragraphs 36 through 38, Kings LA and Tarwater deny the allegations contained therein.

21. Answering paragraph 39, Kings LA and Tarwater incorporate their answers to paragraphs 1 through 33 of the Complaint.

22. Answering paragraphs 40 through 42, Kings LA and Tarwater deny the allegations contained therein.

Separate Affirmative Defenses

First Affirmative Defense

(Estoppel)

23. Plaintiff, by its conduct or the conduct of its agents, is estopped from obtaining the relief sought in the Complaint, or any relief whatsoever, from Kings LA and Tarwater, or either of them.

Second Affirmative Defense

(Waiver)

24. Plaintiff, by its conduct or the conduct of its agents, has waived any right to the relief it seeks in the Complaint, or any relief whatsoever, against Kings LA and Tarwater, or either of them.

Third Affirmative Defense

(Failure to Mitigate)

25. Any damages allegedly sustained by Plaintiff were caused by Plaintiff's (or its agents') own failure to use reasonable means to mitigate such damages and thereby avoid (or at least minimize) such damages.

Fourth Affirmative Defense

(Failure to State Claim)

26. The Complaint, and each cause of action contained therein, fail to state facts sufficient to constitute a valid claim for relief against Kings LA and Tarwater, or either of them.

Fifth Affirmative Defense (Excuse of Performance)

27. Any obligations of Kings LA or Tarwater to Pro-Com as alleged in the Complaint were excused due to intervening or supervening causes, including without limitation the actions of McCormick and Kings Express Inc., a Minnesota corporation (“KEI”) that resulted in the alleged failure of Pro-Com’s product to be timely delivered to its designated destinations.

Sixth Affirmative Defense (Comparative Fault)

10 28. To the extent Pro-Com recovers any damages against Kings LA or
11 Tarwater, or either of them, based on the allegations set forth in the Complaint, the
12 amount of such damages must be allocated proportionally based on the relative
13 fault, if any, of Kings LA or Tarwater versus the fault of McCormick and KEI.

Prayer For Relief

15 WHEREFORE, these answering defendants pray that the Court enter
16 judgment on the Complaint:

- 17 1. Denying Plaintiff the relief sought in the Complaint, or any relief
18 whatsoever, against of Kings LA or Tarwater;

19 2. Awarding Kings LA and Tarwater their costs of suit;

20 3. Awarding Kings LA and Tarwater their reasonable attorneys' fees to
21 the extent permitted by law; and

22 4. For such other and further relief as the Court deems just and proper.

CROSSCLAIM AND THIRD-PARTY COMPLAINT

- 24 1. This Crossclaim and Third-Party Complaint seeks relief in favor of
25 Kings Express LA, Inc., a California corporation (“Kings “LA”) and John Vincent
26 Tarwater, an Individual (“Tarwater”), as Crossclaim Plaintiffs and Third-Party
27 Plaintiffs, against (a) Dennis McCormick, an Individual (“McCormick”), as
28 Crossclaim Defendant, and (b) Kings Express, Inc., a Minnesota corporation

1 (“KEI”), as Third-Party Defendant.

Parties

3 2. Kings LA is a corporation organized and existing under the laws of the
4 State of California, with its principal place of business in Mission Viejo, California.
5 During the time of the events described in the Complaint in this action, Kings LA
6 acted as a shipping broker working with shippers and carriers.

7 3. Tarwater is an individual and resident of Orange County, California.

8 4. McCormick is an individual and resident of Orange County, California.

9 5. KEI is a corporation organized and existing under the laws of the State
10 of Minnesota, and whose operations during the time of the events described in the
11 Complaint were based primarily in St. Cloud, Minnesota. KEI also did business
12 during said time period in Los Angeles County, California.

Jurisdiction and Venue

14 6. This action arises under the Carmack Amendment set forth in 49
15 U.S.C. §14706(a), the federal law governing liability of motor carriers and
16 forwarders for loss, damage or delay to cargo transported in interstate commerce.
17 This Court therefore has federal question jurisdiction over the subject matter of the
18 action under 28 U.S.C. §§1331 and 1337.

19 7. Venue is proper in this judicial district pursuant to Section 1391 of
20 Title 28 of the United States Code.

First Claim for Relief

(Implied Equitable Indemnity Against McCormick and KEI)

23 8. Kings LA and Tarwater incorporate by reference the allegations set
24 forth in paragraphs 1 through 7 of this Crossclaim and Third-Party Complaint, as
25 though fully set forth herein.

26 9. During the time of the events described in the Complaint in this action,
27 Kings LA (as a broker) utilized the services of KEI as a carrier to ship products
28 belonging to Kings LA's customers. To the extent a court awards Pro-Com

1 damages against Kings LA and Tarwater, or either of them, based upon the untimely
2 delivery or non-delivery of Pro-Com's products, such damages (if any) are a direct
3 result of McCormick's and KEI's failure to perform their duties as carrier to Kings
4 LA.

5 10. In defending against Pro-Com's claims, Kings LA and Tarwater have
6 incurred, and continue to incur, necessary and reasonable attorney's fees and other
7 legal costs. Kings LA and Tarwater do not know the full amount of such fees and
8 costs at this time and will seek leave to amend this Crossclaim and Third-Party
9 Complaint if necessary to state said amount when it becomes known.

10 11. Kings LA and Tarwater are entitled to equitable indemnity from
11 McCormick and KEI for any and all damages, liabilities, losses, fees and costs
12 incurred by Kings LA and Tarwater, or either of them, in connection with this
13 action.

Second Claim for Relief

(Tort of Another against McCormick and KEI)

16 12. Kings LA and Tarwater incorporate by reference the allegations set
17 forth in paragraphs 1 through 11 of this Crossclaim and Third-Party Complaint, as
18 though fully set forth herein.

19 13. Without admitting the validity of any of the claims alleged in the
20 Complaint in this action, Kings LA and Tarwater assert they have been included as
21 defendants in this action solely as a result of the actions of McCormick and KEI.

22 14. To the extent the court finds Pro-Com to have sustained any damages
23 and be entitled to any recovery against Kings LA and Tarwater, or either of them,
24 such damages resulted not from any wrongful act or omission on the part of Kings
25 LA or Tarwater, but rather was caused by, and is entirely attributable to, the tortious
26 acts and omissions of McCormick and KEI.

27 15. As a direct result of McCormick's and KEI's actions as alleged above,
28 Kings LA and Tarwater have been forced to incur, and continue to incur, necessary

1 and reasonable attorney's fees and other legal costs. Kings LA and Tarwater do not
2 know the full amount of such fees and costs and will seek leave to amend this
3 Crossclaim and Third-Party Complaint if necessary to state the amount when it
4 becomes known.

5 16. As a result of McCormick's and KEI's tortious acts, Kings LA and
6 Tarwater are entitled to be indemnified by McCormick and KEI for any and all
7 damages, liabilities, losses, fees and costs incurred by Kings LA and Tarwater, or
8 either of them, in connection with this action.

Prayer for Relief

10 Kings LA and Tarwater pray for relief on this Crossclaim and Third-Party
11 Complaint as follows:

On the First Claim for Relief (Implied Equitable Indemnity)

13 1. For defense and indemnity from damage, liability, and loss incurred as
14 herein alleged.

15 || 2. For attorney's fees as permitted by law.

On the Second Claim for Relief (Tort of Another)

17 3. For defense and indemnity from damage, liability, and loss incurred as
18 herein alleged.

19 || 4. For attorney's fees as permitted by law.

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1 On All Claims for Relief

- 2 5. For costs of suit herein incurred.
3 6. For such other and further relief as the court may deem proper.

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5 Dated: August 6, 2018

RUTAN & TUCKER, LLP
IRA G. RIVIN

6
7 By:



Ira G. Rivin
Attorneys for Defendants, Crossclaim
Plaintiffs, and Third-Party Plaintiffs
KINGS EXPRESS LA, INC., and
JOHN VINCENT TARWATER

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13 Defendants, Crossclaim Plaintiffs, and Third-Party Plaintiffs Kings Express
14 LA, Inc., and John Vincent Tarwater demand a jury trial in this action.

15
16 Dated: August 6, 2018

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17
18 By:



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